

FCC MAIL SECTION

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Federal Communications Commission

DA 97-1821

DISPATCHED  
Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.  
(Patterson, Iowa)

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MM Docket No. 97-187  
RM-9149

### NOTICE OF PROPOSED RULE MAKING

**Adopted: August 20, 1997**

**Released: August 29, 1997**

Comment Date: October 20, 1997

Reply Comment Date: November 4, 1997

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by West Wind Broadcasting ("petitioner"), requesting the allotment of Channel 290A to Patterson, Iowa, as the community's first local aural transmission service. Petitioner states it will apply for the channel, if allotted.

2. In support of its request, petitioner submits that Patterson is located within Madison County which has a population of 12,483 persons, noting that Patterson is an incorporated community with a population of 128 persons.<sup>1</sup> It states that the community would greatly benefit from a FM allotment since such a local radio service would provide warnings of emergency conditions caused by severe weather or other health hazards.

3. Section 307(b) of the Communications Act of 1934, as amended, requires that the Commission allot channels "...among the several states and communities." The Commission has defined "communities" as geographically identifiable population groupings. Generally, if a community is incorporated or listed in the U.S. Census, that is sufficient to satisfy its status. Absent such recognizable community factors, the petitioner must present the Commission with sufficient information to demonstrate that such a place has social, economic, or cultural

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<sup>1</sup> Population figures are taken from the 1990 U.S. Census.

indicia to qualify it as a community for allotment purposes. See e.g., Oak Grove, FL, 5 FCC Rcd 3774 (1990); Hannibal, OH, 5 FCC Rcd 3315 (1990); and Statenville, GA, 5 FCC Rcd 2685 (1990). Although we do recognize that Patterson is listed in the 1990 Census with its own post office and zip code and is an incorporated community, we may find that a population group of 128 people does not constitute a community for allotment purposes. Our concern is a community the size of Patterson may be devoid of the customary factors associated with determining community status, such as library, schools, shopping centers churches, a newspaper and social or civic organizations. See e.g., Searles Valley, CA, 3 FCC Rcd 5221 (1988); see also Naples FL, 41 RR 2d 1549 (1977). In past cases we have rejected claims of community status where a nexus has not been shown between the political, social and commercial organizations and the community in question. Therefore, petitioner is requested to present the Commission with specific information to demonstrate that Patterson has the social, economic and governmental indicia to qualify it as a "community" for allotment purposes. See Gretna, Marianna, Quincy and Tallahassee, FL, 6 FCC Rcd 633 (1991) and cases cited therein.

3. If Patterson is ultimately found to be a community for allotment purposes, Channel 290A can be allotted to Patterson in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.<sup>2</sup>

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Patterson, Iowa	--	290A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before October 20, 1997, and reply comments on or before November 4, 1997, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, DC 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

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<sup>2</sup> The coordinates for Channel 290A at Patterson are 41-20-54 NL and 93-52-49 WL.

Victor A. Michael, Jr., President  
West Wind Broadcasting  
c/o Magic City Media  
1912 Capitol Avenue, Suite 300  
Cheyenne, Wyoming 82001  
(Petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202)418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

Attachment: Appendix



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APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be

accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, DC 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW, Washington, DC.